

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ANTHONY M. LEE,

Plaintiff,

v.

HEATH PARSHALL, JOHN DOE I
and JANE DOE II,

Defendants.

OPINION and ORDER

16-cv-524-bbc

Although this case has not gotten off the ground yet, it already has a lengthy and somewhat convoluted history. Pro se plaintiff Anthony Lee, a prisoner at the Green Bay Correctional Institution, filed this case in the Eastern District of Wisconsin, raising a claim about restrictions on his ability to obtain legal assistance from other prisoners. Lee v. Foster, No. 15-cv-1132 (E.D. Wis.), dkt. #1. After assessing and collecting an initial partial payment of the filing fee in accordance with 28 U.S.C. § 1915(b)(1), the court in the Eastern District screened the complaint in accordance with 28 U.S.C. §§ 1915(e)(2) and 1915A. The court concluded that plaintiff had not provided enough facts to provide fair notice of his claim, but it gave plaintiff leave to file an amended complaint. Dkt. #20. At the same time, the court granted plaintiff's request for assistance in recruiting counsel on the ground that plaintiff was illiterate. (Plaintiff alleged that all of his filings had been prepared by another prisoner.) However, the court limited the appointment to drafting a complaint only.

Dkt. #23.

With the court's permission, dkt. #27, counsel drafted an amended complaint raising a different claim against different defendants. Dkt. #32. In particular, plaintiff alleged in his new complaint that a police officer used excessive force against him during an arrest in La Crosse, Wisconsin after which the officer and unknown medical staff at the La Crosse County jail failed to provide appropriate medical treatment. After plaintiff filed the amended complaint, the court transferred the case to this district and relieved counsel of any further obligation to represent plaintiff. Dkt. #34.

Plaintiff's amended complaint is now before this court for screening under 28 U.S.C. §§ 1915(e)(2) and 1915A. With respect to his excessive force claim, plaintiff alleges that defendant Heath Parshall stopped him while he was walking on July 15, 2012, pointed a gun at him, "jumped on" him even after he complied with Parshall's order to sit down and then struck him with a blunt object without provocation, causing "extreme" swelling and bruising to the left side of his face and left eye. Although it was obvious that plaintiff needed medical attention, Parshall provided none and instead arrested plaintiff and transported him to the jail. Although plaintiff asked jail staff to treat his injuries, they did nothing except give him an ice pack. Plaintiff says that he still suffers from sensitivity to light, headaches and loss of vision in his left eye because of defendants' conduct.

Plaintiff's excessive force claim against defendant Parshall arises under the Fourth Amendment, which prohibits unreasonable searches and seizures. The general question for an excessive force claim is whether the force used was reasonable under all the circumstances.

These circumstances include the severity of the suspected crime, the danger posed by the suspect and whether the suspect is “actively resisting arrest” or attempting to flee. Abbott v. Sangamon County, Illinois, 705 F.3d 706, 724–25 (7th Cir. 2013). In this case, plaintiff alleges that defendant Parshall pointed a gun at him and then assaulted him without any provocation, so he has stated a claim upon which relief may be granted for excessive force. Baird v. Renbarger, 576 F.3d 340, 344-45 (7th Cir. 2009) (“[P]olice are not entitled to point their guns at citizens when there is no hint of danger.”); Clash v. Beatty, 77 F.3d 1045, 1048 (7th Cir. 1996) (“[P]olice officers do not have the right to shove, push, or otherwise assault innocent citizens without any provocation whatsoever.”). Accordingly, I will allow plaintiff to proceed on this claim.

In his complaint, plaintiff says that his medical care claim arises under the Fourteenth Amendment, but that appears to be incorrect. Generally, “the protections of the Fourth Amendment apply at arrest and through the . . . probable cause hearing, [but] due process principles [under the Fourteenth Amendment] govern a pretrial detainee's conditions of confinement after the judicial determination of probable cause.” Ortiz v. City of Chicago, 656 F.3d 523, 530 (7th Cir. 2011). Because plaintiff alleges that he began requesting medical help immediately after the use of force, it is reasonable to infer at this stage of the proceedings that the Fourth Amendment governs the medical care claim as well.

Again, under the Fourth Amendment, the standard is reasonableness. In determining whether a defendant unreasonably denied medical care to a plaintiff in violation of the Fourth Amendment, a court or finder of fact may consider a number of factors, such as how

serious the plaintiff's medical need was, the extent to which the defendant was aware of the need and the reason the defendants did not provide treatment. Ortiz, 656 F.3d at 530. In this case, plaintiff alleges that defendant Parshall provided no treatment and that jail staff did nothing but provide ice, even though it was obvious that more treatment was needed. Those allegations are sufficient to state a claim upon which relief may be granted.

Plaintiff does not know the names of the defendants who were staff members at the La Crosse County jail. However, plaintiff's lack of knowledge is not a reason to deny him leave to proceed on a claim.

"[W]hen the substance of a pro se civil rights complaint indicates the existence of claims against individual officials not named in the caption of the complaint, the district court must provide the plaintiff with an opportunity to amend the complaint." Donald v. Cook County Sheriff's Department, 95 F.3d 548, 555 (7th Cir.1996). One way of handling the problem of an unknown defendant is to allow the plaintiff to proceed against an administrator who could provide assistance in identifying the proper defendant. Duncan v. Duckworth, 644 F.2d 653, 655-56 (7th Cir. 1981). Accordingly, I will allow plaintiff to proceed against the sheriff of La Crosse County, Steve Helgeson, for the purpose of identifying the unknown staff members. Early on in this lawsuit, Magistrate Judge Stephen Crocker will hold a preliminary pretrial conference. At the time of the conference, the magistrate judge will discuss with the parties the most efficient way to obtain identification of the unnamed defendants and will set a deadline within which plaintiff is to amend his complaint to include the unnamed defendants.

Finally, I conclude that it is appropriate to provide assistance to plaintiff in recruiting counsel for the remainder of the case. If plaintiff was unable to draft a complaint on his own, it seems unlikely that he will be able to litigate the rest of the case on his own either.

ORDER

IT IS ORDERED that

1. Plaintiff Anthony Lee is GRANTED leave to proceed on his claims that: (1) defendant Heath Parshall used excessive force against him in August 2012, in violation of the Fourth Amendment; and (2) defendant Parshall and an unknown jail staff member or members failed to provide adequate medical care to plaintiff for the injuries he sustained related to the use of force, in violation of the Fourth Amendment.

2. The caption is AMENDED to include Steve Helgeson as a defendant. I am allowing plaintiff to proceed against Helgeson for the sole purpose of determining the identity of the unknown jail staff member or members.

3. The clerk of court is directed to forward copies of plaintiff's amended complaint, completed summons forms and this order to the U.S. Marshal for service on Helgeson and defendant Parshall. Plaintiff should not attempt to serve defendants on his own.

4. In light of the previous decision to assist plaintiff in recruiting counsel to draft an amended complaint, I will stay further proceedings (other than service and defendants' answer to the complaint) while the court seeks counsel to represent plaintiff for the remainder of the case. If I find counsel willing to represent plaintiff, I will advise the parties

of that fact. Once the defendants file an answer and a decision regarding counsel is reached, the clerk of court will schedule the case for a preliminary pretrial conference.

5. For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or their attorney.

6. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

7. If plaintiff is transferred or released while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendants or the court are unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 15th day of September, 2016.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge